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REIMAGINING PUNISHMENT AND JUSTICE

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THIS SPECIAL EDITION of *Scottish Justice Matters* is focused upon *Reimagining Punishment and Justice* and we hope the ideas it contains will play an important part in the development of new ways of thinking about punishment and justice by exposing contradictions in the gap between the desire for a better future and the constructed 'naturalness' of existing conditions. For us, the discussions and debates that emerged around the Scottish Referendum in 2014 epitomised many of these contradictions, notably the relationship between a desire for social change and a reluctance to move beyond the 'already known'. This has been a characteristic of many aspects of social life, as well as a feature of Scottish criminal justice.

In recent years the distinctiveness of Scottish identity, and justice, has been redefined. The decision to shelve the construction of a new, large, national prison for women at Inverclyde denoted an atmosphere where innovative developments could potentially be introduced, and where the voices of wider penal reformers appeared to be heard. Nevertheless, the context which surrounds the Scottish criminal justice system is reflective of national and international developments more broadly, where limitations often appear to exert an influence on the potential to imagine or to reimagine what transformative elements may be possible and/or desirable.

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'Punishment' and 'justice' are complex concepts, both historically nuanced and ideologically saturated. What does it mean to 'reimagine' them? And is it possible to reimagine 'justice' alongside 'punishment'?

We have brought together a number of contributors from practice and academia to explore their visions for justice and to consider the tension between the *imaginary*, a vision which we consider to be captive to a particular ideological

representation, and the *imagination*, here defined as the creative openness towards new conceptions and social practices.

The concepts of 'imagining', 'imagination', and 'imaginary' hold complex and contradictory meanings. Pat Carlen (2008) used the concept of the *imaginary* to show how various political and populist ideologies structure a representation, or *image*, of penal policy and practice. Such representations depict the dominant discourse of governance as natural and inevitable, and thereby close off alternative, more imaginative discourses on justice and penal practice. Combating these representations, going beyond them to envision something 'otherwise', is the work of the *imagination*.

Overview

Reimagining Punishment and Justice includes a range of different perspectives on the theme, with contributions from practitioners and academics, located within criminal justice and from broader disciplines outside it. They provide examples of pressures exerted by 'the imaginary' as it is exercised across broad social spheres. Importantly, all of our contributors have attempted to help us to reimagine things differently.

Bill Munro explores 'Justice' and the imaginary of its representations, attempting to trace the hidden and often unjust relationships which bind the individual to the law and to the state. Importantly, he opposes the traditional humanistic meanings of blindfolded Justice, signifying that the judiciary should stand apart from the sovereign, with alternative constructions that interpreted the blindfold as representing Justice's 'unseeing' relationship to the political order.

The role of the imagination is seen in the exciting examples of innovation provided by the Greenock and Shotts Prisons Reading Groups, a collaborative contribution from a group of students and staff who reflect upon how their experience impacted on their understanding of learning and punishment. Focusing on equality, education and community, the reading group members reflect on these themes for reimagining justice.

Rachel Thain-Gray, Rebecca Jones and Margaret Malloch consider the ways in which women's experiences of

'sectarianism' in Scotland are inextricably linked with issues of women's safety. *Mixing the Colours* project at Glasgow Women's Library brings women together to share experiences and to find collective ways of addressing conflict within groups and communities. Using collective action theory, the project provides a space for women to challenge structural inequalities and to ensure that recipients of prejudice, discrimination and hatred, are central to the process of change.

David Strang, HM Chief Inspector of Prisons for Scotland, notes that his work in prisons questions how good we actually want our prisons to be. Attempting to address this thorny question, he considers the significance of imprisonment, relationships and hope. The centrality of relationships is also emphasised in Antony Duff's contribution, where rather than imagining alternatives to punishment as a response to crime, he instead attempts to reimagine criminal punishment itself, as civic engagement. Something which can only be effected, as he points out, in a democratic liberal political community where those called to account are citizens, with the necessary membership of the polity. Pete White of *Positive Prisons? Positive Futures ...* provides a response to Professor Duff, using a sporting analogy to consider how the exercise of justice and punishment as civic engagement is progressing in Scotland today.

Mike Nellis sets out the limits of penal reimagining within a Scotland where a new society may be emergent, but where innovations must go beyond existing power relationships and where key organisations must take on the role of reimagining themselves in terms of cultural legacies and innovative practices. Nick Burgess, a local authority Service Manager in Criminal Justice Social Work in interview with Margaret Malloch, highlights a number of innovative interventions within the community in Central Scotland but also the very real constraints that workers encounter in the current environment. He reflects on areas that he would like to see given more attention.

Simon (2007) has argued that the technologies, discourses and metaphors of justice and punishment have become visible features of all kinds of institutions particularly that of health, education, and housing and that states deploy crime to make invisible other social 'problems' it cannot, or no longer cares to treat at its roots. Joe Crawford explores this blurring of crime and social welfare discourses in the rationalisation of eviction in the social rented housing sector in Scotland, highlighting the relevance of structural factors in the accumulation of rent arrears and the symbolic punitive function of eviction. He provides some possible solutions, both radical and practical, as a way of reimagining this problematic practice.

The uses of technologies, discourses and metaphors of punishment is also evident in the area of immigration. In Scotland the need for a fair and humane asylum and immigration policy has been evident in the controversies surrounding some of the practices employed at Dungavel: from issues of abuse, vulnerability of those detained, child detention, to the length of time people can be detained under immigration powers. Britain is the only country in the EU which has no cap on how long people can be detained under immigration powers. Belén Olmos Giupponi considers migration and the criminalisation of undocumented migrants

in the European Union. Taking a focus on international law, she notes that despite the vision of human rights obligations set out in international and European law, this is not always enacted in practice at the level of member states.

From an international perspective, Jonathon Simon illustrates the challenges of reimagining justice in the context of mass incarceration in the USA. Using the example of America's carceral state he argues that the current crisis of mass incarceration requires reimagining the possibilities of penal justice in contemporary democracies.

Key Themes

Reimagining a better world generally involves future aspirations for the good of all. This necessarily concerns how best to organise society and the distribution of 'justice' plays a key role in this process. However, principles of 'justice' become meaningless' or even unjust if society is structurally unequal. So it is important that assumptions about 'punishment' and 'justice', and indeed what we understand as 'crime', are considered with specific attention to how they influence current practice and future imaginings. Inevitably, visions of a 'just', 'crime free' society raise questions around material and social inequalities, private ownership and power relations (see Malloch and Munro, 2013). Similarly, recognition of the intersectionality of class, 'ethnicity' and gender relations becomes evident as the basis for overlapping structural inequalities that determine and shape processes of criminalisation.

Our contributions highlight the extent to which the possibilities of reimagining punishment and justice first require acknowledging inequality as a core problem of justice. The limitations of our ability to 'reimagine' and the difficulties inherent in breaking out of the framework of neoliberal economic thinking are important. The problem of 'starting from where we are', while advocating realism can actually result in entrenchment in existing limitations with a vision constrained by lack of imagination of how things might be otherwise.

Perhaps we should aspire to place more emphasis on the imagination and less on 'evidence', itself only a partial view of 'what is' and something that is often overlooked when justification for the prison is invoked (Barton et al, 2007). Fundamental reform requires imaginative alternatives but also a radical change in structures of power and the rethinking of dominant cultures, both institutionally and politically.

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